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## 6 IN THE UNITED STATES DISTRICT COURT

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## 10 FOR THE NORTHERN DISTRICT OF CALIFORNIA

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BENJAMIN CHOYCE,

No. C 11-0864 JSW (PR)

Petitioner,

**ORDER OF DISMISSAL**

v.

WARDEN,

Respondent.

16 Petitioner, a California prisoner, filed this pro se petition for a writ of habeas  
17 corpus pursuant to 28 U.S.C. § 2254. An application for a federal writ of habeas corpus  
18 filed by a prisoner who is in state custody pursuant to a judgment of a state court may not  
19 be granted unless the prisoner has first exhausted state judicial remedies, either by way  
20 of a direct appeal or in collateral proceedings, by presenting the highest state court  
21 available with a fair opportunity to rule on the merits of each and every issue he or she  
22 seeks to raise in federal court. *See* 28 U.S.C. § 2254(b),(c); *Granberry v. Greer*, 481  
23 U.S. 129, 133-34 (1987). Petitioner has the burden of pleading exhaustion in his habeas  
24 petition. *See Cartwright v. Cupp*, 650 F.2d 1103, 1104 (9th Cir. 1981).

25 Petitioner indicates in his petition that he did not file any direct appeals from the  
26 conviction he is challenging. (Petition at 3.) He also indicates that the only other  
27 challenges he made to his conviction were in the state superior court. (*Id.* at 4-5.)  
28 Consequently, it is clear from the petition that Petitioner has not presented any claims to

1 the California Supreme Court, nor has he presented any exceptional circumstances to  
2 excuse his doing so. *See Granberry*, 481 U.S. at 134. The petition is therefore  
3 unexhausted and is DISMISSED without prejudice to refiling after available state  
4 judicial remedies are exhausted.

5 The Clerk of the Court shall enter judgment and close the file.

6 IT IS SO ORDERED.

7 DATED: March 29, 2011

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9 JEFFREY S. WHITE  
10 United States District Judge

UNITED STATES DISTRICT COURT  
FOR THE  
NORTHERN DISTRICT OF CALIFORNIA

## BENJAMIN CHOYCE.

Case Number: CV11-00864 JSW

Plaintiff,

## **CERTIFICATE OF SERVICE**

V.

WARDEN, et al,

Defendant.

I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

That on March 29, 2011, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

Benjamin C. Choyce  
T95057  
P.O. Box 5002  
Calipatria, CA 92233

Dated: March 29, 2011

Jennifer Ottolini

Richard W. Wiekling, Clerk  
By: Jennifer Ottolini, Deputy Clerk